



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/777,664	02/07/2001	Sandhya Mishra	2001_0120A	9236

513 7590 06/28/2002

WENDEROTH, LIND & PONACK, L.L.P.
2033 K STREET N. W.
SUITE 800
WASHINGTON, DC 20006-1021

EXAMINER

MARX, IRENE

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 06/28/2002

✓

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/777,664	Mishra
	Examiner Irene Marx	Art Unit 1651
		
<i>— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —</i>		
Period for Reply		
<p>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>one</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</p>		
<ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 		
Status		
<p>1) <input type="checkbox"/> Responsive to communication(s) filed on _____</p>		
<p>2a) <input checked="" type="checkbox"/> This action is FINAL. 2b) <input type="checkbox"/> This action is non-final.</p>		
<p>3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11; 453 O.G. 213.</p>		
Disposition of Claims		
<p>4) <input checked="" type="checkbox"/> Claim(s) <u>1-20</u> is/are pending in the application.</p>		
<p>4a) Of the above, claim(s) _____ is/are withdrawn from consideration.</p>		
<p>5) <input type="checkbox"/> Claim(s) _____ is/are allowed.</p>		
<p>6) <input type="checkbox"/> Claim(s) _____ is/are rejected.</p>		
<p>7) <input type="checkbox"/> Claim(s) _____ is/are objected to.</p>		
<p>8) <input checked="" type="checkbox"/> Claims <u>1-20</u> are subject to restriction and/or election requirement.</p>		
Application Papers		
<p>9) <input type="checkbox"/> The specification is objected to by the Examiner.</p>		
<p>10) <input type="checkbox"/> The drawing(s) filed on _____ is/are objected to by the Examiner.</p>		
<p>11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved.</p>		
<p>12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.</p>		
Priority under 35 U.S.C. § 119		
<p>13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).</p>		
<p>a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of:</p>		
<p>1. <input type="checkbox"/> Certified copies of the priority documents have been received.</p>		
<p>2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.</p>		
<p>3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</p>		
<p>*See the attached detailed Office action for a list of the certified copies not received.</p>		
<p>14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).</p>		
Attachment(s)		
<p>15) <input type="checkbox"/> Notice of References Cited (PTO-892)</p>		
<p>16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p>		
<p>17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____</p>		
<p>18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____</p>		
<p>19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p>		
<p>20) <input type="checkbox"/> Other: _____</p>		

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claim 1 drawn to strains of a Cyanobacteria classified in Class 435, subclass 252.1, for example.

II. Claims 2-20 drawn to the use of Cyanobacteria in methods of removing calcium from sea and soil brines, classified in Class 435, subclass 262, for example.

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP 806.05(h)). In the instant case the product as claimed can be used in a materially different process of using that product such as obtaining antibodies or as host cells in processes involving the use of recombinant DNA or for the production of single cell protein for nutritional supplementation.

The inventions above are independent and distinct, each from the other. They have acquired a separate status in the art as a separate subject for inventive effect and require independent searches (as indicated by the different classification). The search for each of the above inventions is not co-extensive particularly with regard to the literature search. Further, a reference which would anticipate the invention of Group I would not necessarily anticipate or make obvious the other group.

For these reasons restriction for examination purposes is proper.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

Serial No. 09/777664

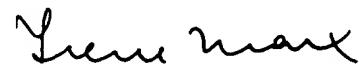
-3-

Art Unit 1651

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (703) 308-2922. The examiner can normally be reached on Monday through Friday from 6:30 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The appropriate fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service whose telephone number is (703) 308-0198 or the receptionist whose telephone number is (703) 308-1235.



Irene Marx
Primary Examiner
Art Unit 1651